



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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CC:PA:APJP:1:RBailey
POSTN-151756-01

MEMORANDUM FOR DOUG E. PETERSON
PROGRAM ANALYST
W:E:D:D2: C4-181

FROM: James C. Gibbons, Branch Chief
CC:PA:APJP:1

SUBJECT: FAXed Signatures for CAWR & FUTA

This memorandum is in response to your email dated July 25, 2001, and a subsequent telephone conversation with Mr. Raymond Bailey of our office, concerning guidance in connection with SB/SE's proposed policy to accept FAXed signatures in the Combined Annual Wage Reporting ("CAWR") program and the Federal Unemployment Tax Act ("FUTA") program. As Mr. Bailey stated in the telephone conversation, our overall view on the legality of FAXed signatures has not changed since our most recent memorandum to you dated November 9, 2001. However, we recognize that the facts in this inquiry are somewhat different; and, therefore, a review of the law in light of those new facts might be desirable.

The memorandum dated November 9, 2001, addressed the legality of accepting Faxed signatures in the Automated Underreporter ("AUR") program. The primary difference is that AUR is a IMF program, dealing with individual taxpayers. The CAWR and FUTA programs are BMF programs, dealing with employers. We have reviewed the new facts, and we have concluded that SB/SE's proposal to accept Faxed signatures in the CAWR and FUTA programs falls within the legal requirements, set out below, for accepting FAXed signatures.

Facts

SB/SE is considering accepting FAXed signatures in the CAWR and FUTA programs. Specifically, SB/SE is considering allowing taxpayers (employers) to return signed responses to CP 168 and CP 251 notices, and 380C letters by way of FAXing. The number where FAXed responses will be sent will not be published. Acceptable Faxed signatures on responses to CP 168 and CP251 notices, and 380C letters will be limited

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to those employers who 1) received the notice or letter; 2) responded to the Service by phone or letter; and 3) were told by the Service that a response by FAXing was an option.

Discussion

Section 6061(a) of the Internal Revenue Code provides that except as otherwise provided by subsection (b) (relating to signature waivers) and §§ 6062 and 6063 (relating to corporation returns and partnership returns, respectively), any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary.

Section 6065 specifies that except as otherwise provided by the Secretary, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties or perjury.

Section 301.6061-1(b) of the Regulations on Procedure and Administration provides that the Secretary may prescribe forms, instructions, or other appropriate guidance concerning the method of signing any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations.

For purposes of this memorandum, FAXing is a process in which a FAX machine electronically scans an original document, reduces the document to a series of digital signals, and transmits those signals over telephone lines to a receiving machine that reassembles the signals into a reproduction of the original document. The signature on a FAX reproduction is likewise a reproduction of the "original" signature.

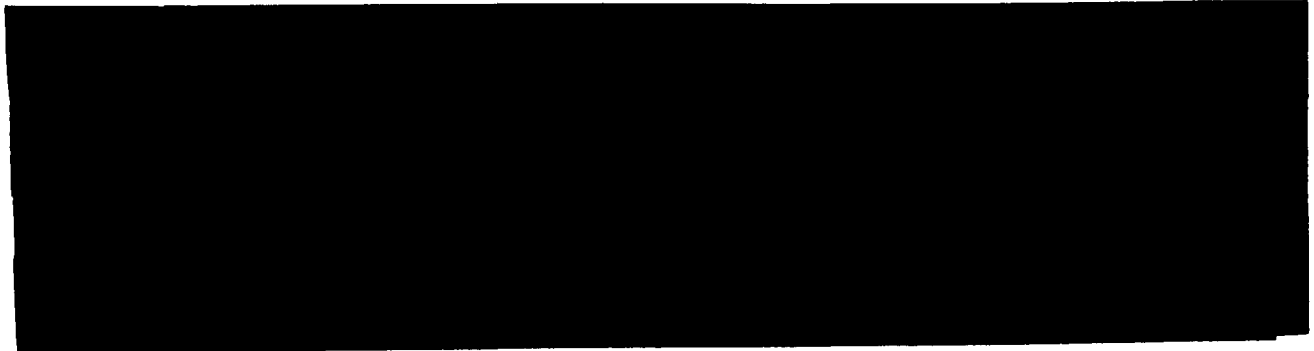
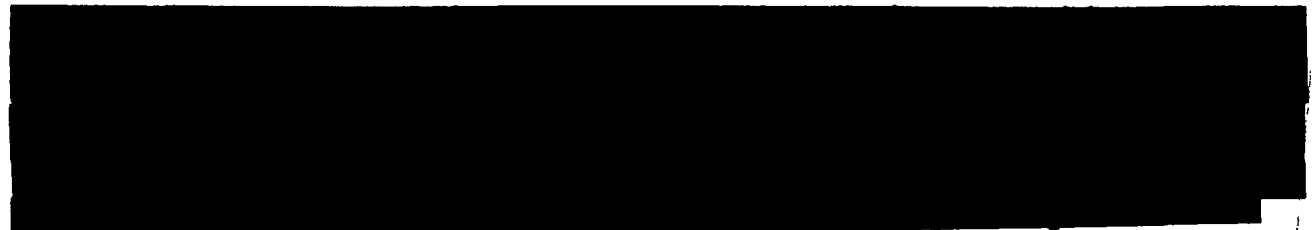
Sections 6061 and 6065 of the Code and the regulations thereunder give the Secretary very broad discretion to prescribe the method of signing any return, statement, or other document. Sections 6061 and 6065 do not define signature but rather subsume the common law definition. At common law, the critical element of signature is the signer's act of adopting the document being "signed." Under certain circumstances, if a taxpayer adopts a FAX reproduction as his or her signature, the FAXing method of signing may satisfy the requirements of §§ 6061 and 6065 of the Code. The signer's act of either transmitting or authorizing the transmission of the FAX could constitute the requisite intent to adopt the FAX signature.

In our opinion, the taxpayer's decision to sign the return through the use of a FAX transmission, combined with the taxpayer's act of transmitting or authorizing the transmission of the FAX, constitutes the requisite intent on behalf of the taxpayer to

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adopt the FAX signature. The issue for the Commissioner is whether the FAX signature is reliable for purposes of authenticating and verifying the return.

The purpose of the signature requirement set forth in §§ 6061 and 6065 is to (1) authenticate the return by identifying it as the signer's and (2) verify or confirm the truth, correctness and completeness of the return. In order that the Service accept FAXed signatures, it must be satisfied that the FAXed signature reliably authenticates and verifies the taxpayer's return. Reliability is ultimately a factual question. The FAXed signature must assure the Service that the taxpayer, and not another party, signed the return. The Commissioner's determination of reliability should include an analysis of potential compliance risks to tax administration.

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